

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
APR 17 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of) CC Docket No. 94-11
TELEPHONE AND DATA SYSTEMS, INC.) File No. 10209-CL-P-715-B-88
For facilities in the Domestic)
Public Cellular Telecommunications)
Radio Service on Frequency Block)
B, in Market 715 Wisconsin 8)
(Vernon), Rural Service Area)

DOCKET FILE COPY ORIGINAL

To: The Honorable Joseph P. Gonzalez
Administrative Law Judge

REPORT ON STATUS OF PREPARATION AND FILING
OF SETTLEMENT DOCUMENTS AND PLEADINGS
AND REQUEST FOR AN ADDITIONAL
THIRTY DAY SUSPENSION OF PROCEDURAL DATES

Telephone and Data Systems, Inc. ("TDS"), United States Cellular Corporation ("USCC"), the Wisconsin 8 Settlement Group (the "Settlement Group"),¹ BellSouth Mobility Inc ("BellSouth") and the Wireless Telecommunications Bureau (the "Bureau") hereby submit a report on the status of the preparation and filing of the settlement documents and other pleadings proposed to resolve this proceeding. The parties also request an additional thirty days, until May 17, 1995, to submit for approval the various pleadings which, if favorably acted upon, would greatly simplify

¹ The Settlement Group includes Coon Valley Farmers Telephone Company, Inc., Farmers Telephone Company, Hillsboro Telephone Company, Inc., LaValle Telephone Cooperative, Mount Horeb Telephone Company, Richland-Grant Telephone Cooperative, Inc., Vernon Telephone Cooperative, Century Cellnet, Inc., Contel Cellular, Inc., Monroe County Telephone Company, Pacific Telecom Cellular, Inc., and Viroqua Telephone Company.

this proceeding and result in an earlier resolution of the issues pending in this proceeding. In support of this request, the parties state as follows:

On March 14, 1995, the Presiding Judge granted a suspension of the procedural dates in this proceeding until April 17, 1995 to permit the parties time to submit for approval various pleadings related to the proposed resolution of the issues pending in the proceeding. See Order, FCC 95M-74, released March 16, 1995. Despite the best efforts of counsel to the parties, not all of the definitive agreements and pleadings required to be filed have been completed. The parties therefore request an additional thirty days to complete the process of negotiating, preparing and filing these documents. The grant of an additional thirty days is warranted by the following report.

I. BellSouth Settlement Documents.

On March 30, 1995, TDS, USCC and BellSouth filed with the Presiding Judge and the Bureau concurrent Joint Requests seeking approval of the Definitive Settlement Agreement between TDS, USCC, and BellSouth and various of their affiliates. TDS, USCC and BellSouth have prepared and filed the thirteen FCC applications necessary to obtain FCC consent for the transactions

that effectuate the settlement. The Joint Requests and these various FCC applications await FCC action.²

II. The Settlement Group Settlement Documents.

On March 10, 1995, TDS, USCC and the Settlement Group, by counsel, executed a letter Agreement in Principle.³ During the past thirty days, counsel for TDS and USCC have prepared drafts of a Definitive Settlement Agreement (8 pages), a Partnership Interest Purchase Agreement (22 pages) and an Amended and Restated Agreement of Limited Partnership (60 pages). These drafts have been provided to counsel to the Settlement Group, who has reviewed and commented on the drafts. Thirty days time is necessary to complete the negotiation over these documents and, presumably, to secure their execution. The settlement involves a purchase of an interest in the on-going business of the Wisconsin 8 wireline cellular system. The documents covering this purchase must be reviewed and approved by all twelve telephone companies that are members of the Settlement Group.

Additionally, counsel for TDS and USCC have prepared and are preparing drafts of a Joint Request for Approval of Settlement, a Petition for Leave to Amend and Amendment, and a

² TDS, USCC and BellSouth filed twelve pro forma FCC applications, including a pro forma application regarding the Baton Rouge MSA, and one long form application on or before April 5, 1995.

³ A copy of that Agreement in Principle is attached hereto.

pro forma application for FCC consent to the assignment of interim operating authority for the Wisconsin 8 RSA. These pleadings seek consent to effectuate the transactions contemplated by the settlement documents and will be exchanged within the next week.

III. TDS, USCC, and The Bureau.

TDS and USCC are in the process of preparing with the Bureau a Joint Motion For Summary Decision and its accompanying documents. These pleadings include an extensive discussion of the record in the proceeding and will be ready for review by the Bureau within the next week.

IV. An Additional Thirty Day Suspension is Necessary and Warranted.

TDS and USCC had hoped to complete the process of negotiating and submitting all definitive settlement agreements and pleadings within the thirty-day suspension first granted by the Presiding Judge. Given the volume of documents involved, however, and the significant review required, this has not been possible. Counsel believe, however, that the additional thirty days should be sufficient time to conclude the preparation, review, negotiation and execution of these documents.

Counsel for TDS and USCC propose to file two interim reports, one on April 28, 1995 and one on May 8, 1995, to advise the Presiding Judge of the status of these matters.

FOR THE FOREGOING REASONS, the parties respectfully request an additional 30 day suspension of the procedural dates in this proceeding.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

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Nathaniel F. Emmons
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THE WIRELESS TELECOMMUNICATIONS BUREAU

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Dated: April 17, 1995

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March 10, 1995

Kenneth E. Hardman, Esq.
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Re: TDS -- Wisconsin Settlement Group

Dear Ken:

This letter sets forth the terms of the Agreement in Principle reached by you, representing Coon Valley Farmers Telephone Company, Inc. ("Coon Valley"), Farmers Telephone Company ("Farmers"), Hillsboro Telephone Company, Inc. ("Hillsboro"), LaValle Telephone Cooperative ("LaValle"), Mount Horeb Telephone Company ("Mt. Horeb"), Richland-Grant Telephone Cooperative, Inc. ("Grant"), Vernon Telephone Cooperative ("Vernon" and, together with Coon Valley, Farmers, Hillsboro, LaValle, Mt. Horeb and Grant, the "Class A Parties"), Century Cellunet, Inc. ("Century"), Contel Cellular, Inc. ("Contel"), Monroe County Telephone Company, for Universal Cellular for Wisconsin RSA #8.1, Inc. ("Universal"), Pacific Telecom Cellular, Inc., successor by merger to North-West Cellular, Inc. ("PTI"), and Viroqua Telephone Company ("Viroqua" and, together with Century, Contel, Universal and PTI, (the "Class B Parties" and, together with the Class A Parties, the "Settlement Group Parties"), and me, representing Telephone & Data Systems, Inc. ("TDS"), United States Cellular Corporation ("USCC"), Wisconsin RSA #8, Inc. (the "USCC Sub" and, together with TDS and USCC, the "TDS Parties").

Background. TDS filed an application (the "TDS Application") with the Federal Communications Commission (the "FCC") for the wireline authorization to provide cellular telephone service in Rural Service No. 8 in the State of Wisconsin (the "RSA"). The Settlement Group parties filed a Petition to Deny the TDS Application (the "Petition to Deny"). Certain TDS parties and the Settlement Group Parties are involved

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in proceedings before the FCC captioned In re: Application of Telephone & Data Systems, Inc. (CC Docket No. 94-11), referred to herein as the "Wisconsin 8 Proceeding." TDS Parties hold certain authorizations, licenses and assets, directly or indirectly, related to the conduct of wireline cellular telephone operations in the RSA, including interim operating authority for such operations (the "Interim Operating Authority").

For purposes of this Agreement in Principle, references to TDS shall be deemed to include its affiliates, as appropriate, including USCC and the USCC Sub, and references to the Settlement Group Parties shall be deemed to include, as appropriate, their respective affiliates.

Agreement in Principle. The execution of this Agreement in Principle shall evidence the agreement of the parties on behalf of whom it is executed to be bound by the provisions of this paragraph. Promptly after the execution of this Agreement in Principle, and in any event on or before March 13, 1995, the parties hereto agree to file a motion for a stay of the Wisconsin 8 Proceeding for a period of thirty days. Promptly after the filing of the Motion for Stay, the parties hereto shall negotiate in good faith to reach a definitive agreement (the "Definitive Agreement") pertaining to the matters and consistent with the terms set forth herein, which Definitive Agreement shall be subject to ratification by the Boards of Directors of the Settlement Group Parties and the TDS Parties and shall be executed on or before April 14, 1995. Promptly (and in any event within ten business days) after the execution of the Definitive Agreement, the parties hereto agree to prepare and file with the administrative law judge presiding over the Wisconsin 8 Proceeding and to prosecute expeditiously a joint request (the "Joint Request") for approval or consent (the "Court Approval") to the Definitive Agreement and, contingent upon approval to the Definitive Agreement, for withdrawal of the Settlement Group Parties Petition to Deny and associated pleadings pursuant to Section 22.129 of the FCC's rules. Concurrently with the filing of the Joint Request, TDS shall file an application with the FCC requesting its consent to the pro forma assignment of the Interim Operating Authority (and any related licenses) to the limited partnership described herein (the "Pro Forma Application"), contingent upon approval of the Definitive Agreement.

Terms of Agreement. The parties intend that the Definitive Agreement will embody the terms set forth below.

1. On (a) the date on which approval of the Joint Request becomes final, (b) the last day of the calendar month

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after the month in which the FCC approves the Pro Forma Application, or (c) September 30, 1995, whichever is earliest (the "Date of Formation"), TDS (through a subsidiary of USCC) would form a limited partnership with the Settlement Group Parties (sometimes, the "Original Partners"). TDS would be the sole general partner. Except to the extent necessary to implement the provisions of this Agreement in Principle and as otherwise mutually agreeable, the partnership agreement would be substantially the same as the form of the Madison, Wisconsin limited partnership agreement, a copy of which has previously been sent to you. Notwithstanding the preceding sentence, until the fifth anniversary of the Date of Formation, the first refusal rights associated with the Settlement Group Parties' interests in the partnership would be exclusively exercisable by the other Original Partners and, to the extent not so exercised, then by TDS. There would be no right of first refusal applicable to the general partner's interest, but any successor to TDS's general partner's interest would become subject to all of TDS's obligations under the partnership agreement. There would be no right of first refusal applicable to UTELCO's interest in the event TDS exercised its existing option to purchase UTELCO in accordance with its terms, and in such event UTELCO's vote as an independent partner shall terminate. A copy of the limited partnership agreement would be appended in its final, agreed-upon form to the Definitive Agreement. A change in control sufficient to trigger first refusal rights would be deemed to occur in the event of any change, including any direct or indirect change or series of changes and any change by operation of law or otherwise, in the beneficial ownership of a limited partner which, if such limited partner were an FCC licensee, would require FCC consent on a non-pro forma basis; provided, however, that no change of control would be deemed to occur solely on account of (i) any change in beneficial ownership occurring as a result of trading on a national securities exchange, (ii) any transfer to the estate, heirs or a trust for the benefit of the heirs of a deceased individual shareholder of a Class A Party (or UTELCO), or (iii) any lifetime transfer of an interest in the equity of a Class A Party (or UTELCO) to or in trust for the benefit of the heirs of a shareholder of such party in connection with the estate planning of such shareholder.

2. Each Original Partner would be admitted to the partnership with a two percent (2%) limited partner's interest upon the payment to TDS of an amount equal to two percent (2%) of the total amount invested by TDS in the construction and operation of the system through the end of the calendar quarter nearest the Date of Formation. Total investment at December 31, 1994, was \$3,782,513. Promptly after the filing of the Joint Request, TDS would afford the Settlement Group Parties access to

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the records of the USCC Sub to review or audit them to the extent such parties may deem necessary. TDS would represent that no litigation expenses related to the Petition to Deny or the Wisconsin 8 Proceeding are included in the amount of capital invested in the system, and that its bookkeeping and accounting policies and practices with respect to such investment conform to TDS's standard policies and practices applicable to cellular systems which are beneficially wholly owned by TDS. UTELCO, Inc. ("UTELCO"), would be admitted to the partnership on the same terms as the Original Partners, except with respect to voting on the Notice of Removal provision (discussed below).

3. TDS would agree to finance all additional cash needs of the partnership through December 31, 1999. The partnership would pay interest to TDS at two percent (2%) over prime through that date, and would amortize principal and interest thereafter through 2004. TDS would agree to make arrangements to provide this financing, in effect, only on behalf of limited partners who desired it (i.e., no Original Partner would be forced to accept such financing). TDS would submit proposed operating and capital budgets to the limited partners for their review and no such proposed budgets would be finalized until at least one meeting had been held to discuss comments of the limited partners. TDS also will endeavor to make available employees responsible for such matters to answer questions of the limited partners. However, TDS would reserve the right to implement budgets that it in its business judgment believed reasonable.

4. Each Original Partner (and UTELCO) would have the right to require TDS to purchase such partner's partnership interest (the "Option to Sell") at any time during the eighteen-month period beginning on the third anniversary of the Date of Formation. The exercise price would be based on \$200,000 for each one percent (1%) interest, adjusted up or down at a rate equal to fifty percent (50%) of the change in the Consumer Price Index, from the Date of Formation through the date on which the Option to Sell is exercised, plus the amount of all capital contributions made to the partnership by such partner, reduced by the aggregate amount of all distributions received from the partnership by such partner. Upon the exercise of an Option to Sell, no rights of first refusal would apply. In addition, the right of an Original Partner to vote on the exercise of the Notice of Removal provision would terminate immediately upon the exercise of an Option to Sell and any outstanding debt to the partnership in connection with the financing referred to in Paragraph 3 would be due upon the closing thereof.

5. For purposes of the provisions described below,

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the partnership agreement would provide for class voting. Each of the Class A Parties would have one Class A vote. Each of the Class B Parties would have one Class B vote. TDS would have six Class C votes.

(a) TDS would be designated the manager of the cellular system for an initial period of five years from the Date of Formation. Six months prior to the fifth anniversary of the Date of Formation, those Original Partners with respect to which there had been no change in control since the Date of Formation (the "Remaining Original Partners") would vote on TDS's removal as manager. Upon a two-thirds vote of Class A and a two-thirds vote of Class B to remove TDS as manager and elect a new manager, TDS would be notified within thirty days (i) of the vote to remove it as manager and (ii) of the identity of the new manager and the terms of its retention for a term of no more than five years, such notice to set forth all principal terms (including financial terms) of such retention, including the methodology to be used to charge costs to the partnership, the amount of any mark-up on costs charged to the partnership by the manager or its affiliates, the amount of any management fee, any changes planned in roaming or networking agreements with the manager or its affiliates, the amount of interest to be charged on any advances to the partnership, and an explanation of any services (including billing) to be provided to the partnership by the manager or its affiliates (the "Notice of Removal"). One condition of any such retention would be the agreement of the successor manager to replace TDS in its capacity as financial provider of the limited partners and to acquire from TDS any outstanding debt of the partnership at its face value plus accrued interest at the same time it replaced TDS as manager.

(b) Upon receiving a Notice of Removal, TDS would have the right to elect, by written notice to the Remaining Original Partners within thirty days, (i) to specify a price (per percentage interest in the partnership) at which TDS would agree to purchase all of the Remaining Original Partners' interests in the limited partnership or sell all of its interest therein to the Remaining Original Partners (the "Shotgun Notice"), or (ii) to give up management of the system but remain in the partnership, in which event the successor manager would be retained subject to the terms set forth in the Notice of Removal.

(c) Upon receiving a Shotgun Notice from TDS specifying a price for the purchase or sale of partnership interests, the Remaining Original Partners would be required to elect, by written notice to TDS within thirty days, (i) to purchase all but not less than all of TDS's interest in the

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partnership at the price established by TDS, or (ii) to sell all or any portion of their interests in the partnership at the price established by TDS, in which event TDS would remain as manager. Any transaction occurring pursuant to the preceding sentence would be consummated as soon as practicable on or after the fifth anniversary of the Date of Formation, on the tenth business day after all necessary final regulatory and other approvals had been obtained.

6. In the event TDS elected to remain in the partnership while giving up management, any new manager could be retained for a period of no more than five years. At the end of each term, a manager would be retained or a successor manager would be hired upon the affirmative vote of the majority of the combined votes of Classes A, B and C and UTELCO. During any term that TDS is not the manager, all budgets shall be adopted upon the affirmative vote of a majority of the combined votes of Classes A, B and C and UTELCO. For these purposes, and for all votes other than that regarding the Notice of Removal, the vote of an Original Partner would pass to any successor partner or partners on a proportionate basis. Accordingly, while a majority vote would initially be ten out of nineteen, the effect of the rights of first refusal would be to subdivide voting interests so that a majority would eventually be 9.5 plus some fraction of a vote. Notwithstanding the foregoing, for purposes of the Notice of Removal, if TDS acquires more than one Class A Partner during the first five-year period, the vote of any additional Class A Party acquired by TDS during such period (other than upon the exercise of an Option to Sell or a right of first refusal) shall be divided equally among the remaining Class A Parties.

7. If the Remaining Original Partners elect not to remove TDS at the end of the first five-year period or elect to remove TDS but then, after receiving a Shotgun Notice, elect not to purchase TDS's interests in the partnership, the special management provisions would terminate. The special management provisions would terminate automatically before the end of the five-year period if there are fewer than three Remaining Original Partners in Class A or one remaining Original Partner in Class B at any time, or if the aggregate percentage interest in the partnership owned by the Original Partners is equal to or less than ten percent (10%). If the special management provisions were terminated, each Remaining Original Partner would be able to exercise the Option to Sell on the terms described in paragraph 4 above from the time of such termination until the tenth anniversary of the Date of Formation, except that the purchase price would be the appraised fair market value of the interest to be sold, pursuant to a customary appraisal proceeding using one agreed-upon appraiser or three appraisers, one chosen and paid by

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the Original Partner exercising the Option to Sell, one chosen and paid by TDS, and a third chosen by the first two appraisers and paid equally by the Original Partner and TDS.

8. The Settlement Group Parties would enter into an agreement pursuant to which all of its members would withdraw the Petition to Deny and from all participation in the Wisconsin 8 Proceeding and all parties hereto would execute mutual releases concerning all issues and matters involved in the Petition to Deny and the Wisconsin 8 Proceeding. Such withdrawal would be contingent upon the grant of a license for the RSA and that grant becoming final.

* * * * *


If the terms and conditions set forth in this Agreement of Principle accurately summarize the terms of our understanding, please so signify by signing and returning the duplicate original copy of this letter to me prior to the close of business on Friday, March 10, 1995.

Very truly yours,



Michael G. Hron,
Counsel for the TDS Parties

Acknowledged and agreed to this 10th of March, 1995:



Kenneth E. Hardman,
Attorney for the Settlement
Group Parties

Signature Page to Agreement in Principle.

Certificate of Service

I, Gayle C. Kosarin, hereby certify that on this 17th day of April, 1995, a copy of the foregoing Report was served via hand delivery on the following:

The Honorable Joseph P. Gonzalez
Federal Communications Commission
Common Carrier Bureau
2000 L Street, NW
Room 221
Washington, DC 20554

Gayle C. Kosarin